

THE IDEAL CONSTRUCTION OF CASE RESOLUTION FOR VICTIMS OF DOMESTIC VIOLENCE BASED ON RESTORATIVE JUSTICE

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Abstract:

This research aims to find the ideal concept of resolving cases of victims of domestic violence using restorative justice. This research used normative legal methods with a statutory and conceptual approach. The findings showed that the Indonesian legal system has regulated the protection of victims of domestic violence. However, in reality, victims of domestic violence are not only wives. Husbands are also potential victims of violence. This case can be resolved through restorative justice by involving mediators and psychologists with the principles of non-discrimination and gender equality.

Keywords: Household; Restorative Justice; Victims

INTRODUCTION

Marriage is a physical and emotional bond between a man and a woman as husband and wife, with the aim of building a happy and lasting family or household upon the belief in the One and Only God¹. Article 1 of Law Number 1 of 1974 on Marriage contains a strong philosophy related to the nature of building a household, where it states marriage is not just about establishing a relationship between a man and a woman. Instead, marriage is an eternal,

sacred bond before the God Almighty. The sacred promise made by both parties in a marriage should not be tarnished.

The recitation of the sacred vows before the Almighty God is a sacred act. Marriage in Islam is said to be a “*misaqan ghalizhon*” or a solemn covenant. This sacred bond can be tarnished due to acts of violence committed by one party to another in a family relationship. Violence in the

¹ Indonesia Pemerintah, “Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan” (1974),

<https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>.

domestic sphere is not limited to class, race, education level, religion or ethnicity.²

The violence that occurs in the family environment is known as domestic violence. The number of domestic violence cases that occur in Indonesia is rather high. Haiyun Nisa stated that the problem of domestic violence shows complexity³. In the "Universal Declaration of Human Rights", The International Covenant on Civil and Political Rights, and The International Covenant on Economic, Social, and Cultural Rights" it has been regulated that domestic violence is a problem in every country⁴. Indonesia as a country that ratified the above declaration has an obligation to implement it. Domestic violence is a form of violation of human rights. The strong commitment of the Indonesian state to synchronizing the Indonesian legal system with international legal instruments in terms of human rights protection is outlined in the 1945

Constitution of the Republic of Indonesia, Law Number 39 of 1999 on Human Rights, and specifically regulated in Law Number 23 of 2004 on the Elimination of Domestic Violence.

Based on Article 5 and Article 9 of Law Number 23/2004 on the Elimination of Domestic Violence, the types of domestic violence include physical violence, psychological violence, sexual violence, and domestic neglect. To date, most victims of domestic violence are children and women⁵. Rosma Alimi and Nunung Nurwati also reinforce that most victims of domestic violence are women⁶. The data below shows that from 2016-2021 there have been cases of domestic violence committed against women⁷.

Many previous studies have discussed domestic violence. A study by Margie Gladies Sopacua shows that in order to resolve cases of domestic violence, the concept of the rule of law of the prevention system must be formed in every person or human

² Cahyo Edi and Didik Iswahyudi, "Kekerasan Dalam Rumah Tangga (Kdr) Bertentangan Dengan Hak Asasi Manusia (Ham) Di Wilayah Kelurahan Turen," *Jurnal Inspirasi Pendidikan* 5, no. 1 (2015): 610, <https://doi.org/10.21067/jip.v5i1.693>.

³ Haiyun Nisa, "Gambaran Bentuk Kekerasan Dalam Rumah Tangga Yang Dialami Perempuan Penyintas," *Gender Equality: International Journal of Child and Gender Studies* 4, no. 2 (2018): 57, <https://doi.org/10.22373/equality.v4i2.4536>.

⁴ Agung Budi Santoso, "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial," *Komunitas: Jurnal Pengembangan Masyarakat Islam* 10, no. 1 (2019): 39-57, <https://doi.org/10.20414/komunitas.v10i1.1072>.

⁵ Wayan Resmini, Komang Sundara, and Ni Putu Ade Resmayani, "Kekerasan Dalam Rumah Tangga

Dan Implikasinya Terhadap Psikologi Anak," *SELAPARANG Jurnal Pengabdian Masyarakat Berkemajuan* 3, no. 1 (2019): 91, <https://doi.org/10.31764/jpmb.v3i1.1247>.

⁶ Rosma Alimi and Nunung Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)* 2, no. 2 (2021): 211, <https://doi.org/10.24198/jppm.v2i2.34543>.

⁷ Komnas Perempuan, "Bayang-Bayang Stagnansi: Daya Pencegahan Dan Penanganan Berbanding Peningkatan Jumlah, Ragam Dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan," *National Commission On Violence Against Women*, 2022, <https://komnasperempuan.go.id/download-file/736>.

being⁸. Researchers Darania Anisa and Kholifatun Nur Mustofa show that the absence of reports made by victims has an impact on the law that has not been fully successful in protecting victims of domestic violence⁹.

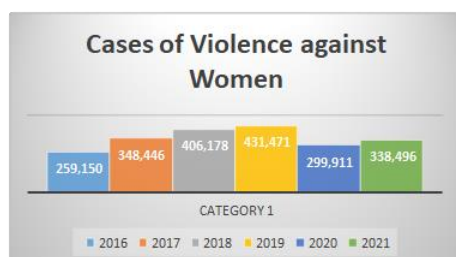


Figure 1. Number of female victims of violence 2016-2021 in 2021

Source: Processed from various sources^{10, 11}

In addition, Basri, Syaifuddin, and Suharty Roslan show that domestic violence does not only occur against wives. In some cases, husbands also experience domestic violence. This occurs due to the inequality of the position of husbands and wives in the household, especially in terms of economics.¹²

The studies presented above share the same topic, which is domestic violence. However, the object of their study is different. Likewise, this study

focuses on the ideal construction of handling cases of domestic violence based on restorative justice. This research is particularly interesting as the effort of restorative justice is used as study material in handling cases of domestic violence. So far, cases of domestic violence have always ended up in the criminal realm. As we all know, Indonesia as a legal state adheres to a criminal justice system called the integrated criminal justice system¹³. This criminal system shows that there is a close integration between the elements in the system. Handling cases of domestic violence through restorative justice certainly provides a different view regarding the resolution of the case. Therefore, it is necessary to conduct a study related to the implementation of restorative justice in handling cases of domestic violence.

METHOD

This research used normative legal methods. Various approaches were used to answer the problems, namely the statutory approach and conceptual approach. Systematization and harmonization of legislation show that

⁸ Margie Gladies Sopacua, "Konsep Ideal Pencegahan Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 213–26.

⁹ Darania Anisa and Kholifatun Nur Mustofa, "Problematika Tindak Pidana Kekerasan Dalam Rumah Tangga (KDRT)," *Jurnal Kajian Gender Dan Anak* Vol. 05, no. 2 (2021): 147–70, <http://jurnal.iain-padangsidempuan.ac.id/index.php/JurnalGender/articel/view/4553/2976>.

¹⁰ Komnas Perempuan, "PEREMPUAN DALAM HIMPITAN PANDEMI: LONJAKAN KEKERASAN SEKSUAL, KEKERASAN SIBER, PERKAWINAN ANAK, DAN KETERBATASAN

PENANGANAN DI TENGAH COVID-19" (Jakarta, 2021), https://drive.google.com/file/d/1M61MRSjq-JzQwiYkadJ60K_G7CIoXNoF/view.

¹¹ Perempuan, "Bayang-Bayang Stagnansi: Daya Pencegahan Dan Penanganan Berbanding Peningkatan Jumlah, Ragam Dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan."

¹² Basri, Syaifuddin S Karim, and Suharty Roslan, "Kekerasan Dalam Rumah Tangga (KDRT) Yang Dialami Suami," *Neo Societal* 3, no. 2 (2018): 37–39.

¹³ Rugun Romaida Hutabarat, "Problematika Lembaga Pemasyarakatan Dalam Sistem Peradilan Terpadu," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 1, no. 1 (2017): 42, <https://doi.org/10.24912/jmishumsen.v1i1.333>.

the laws and regulations studied are systematic, both vertically and horizontally. However, harmonization is not yet apparent in the technical part of the Supreme Court regulations.

ANALYSIS AND DISCUSSION

Power Relations in the Household

Education and quality of life are two variables that have a strong interdependence in achieving human goals. These two variables are not just a cause and effect, but a mutually determining relationship. These two variables are also very decisive in a husband and wife relationship. Where a good education will have a good influence or impact on a person.

The relationship between husband and wife should be equal as they are human beings who have equal dignity and status. However, it is the social construction of a society that creates as if the position of husband and wife as superior and inferior. The emergence of this construction for some people is considered a common thing. In fact, this social construction paves the way for an imbalance in the relationship between husband and wife in a marriage bond so that domestic violence arises. Society views what happens in the household as something taboo, shameful, and very personal matters. Therefore, no external party should intervene in other people's households¹⁴.

This conservative view has narrowed the gap in the professional

handling of domestic violence in accordance with applicable laws. The conservative view of what is normal when domestic violence occurs should be abolished. Society must distinguish between the value system and norms as culture and criminal acts. Although domestic violence also occurs against husbands, the majority of victims are wives and children. The types of violence experienced by women and children are the physical, psychological, economic, and possessive act of violence¹⁵.

Domestic violence is a form of crime committed in the private sphere. The violence that occurs in the household has violated a person's rights and obligations that have been regulated in the 1945 Constitution of the Republic of Indonesia. Article 28G paragraph (1) "Everyone has the right to protection of his/herself, family, honor, dignity, and property and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right"

Factor Causing Domestic Violence

Domestic violence (DV) is one of the crimes that occur within the scope of the family, which acts through personal relationships between husband and wife, parents and children, or between children and other children or other people within the scope of the family. The United Nations defines domestic violence as an act of gender-based violence¹⁶.

¹⁴ Fini Fajrini, Rr Arum Ariasih, and Noor Latifah A, "Determinan Sikap Tindak Kekerasan Dalam Rumah Tangga Di Provinsi Banten," *Aspirasi: Jurnal Masalah-Masalah Sosial* 9, no. 2 (2019): 173–89, <https://doi.org/10.46807/aspirasi.v9i2.1113>.

¹⁵ Syarifuddin, "Penanganan Dan Pencegahan Kekerasan Dalam Rumah Tangga (KDRT) Terhadap

Perempuan Dan Anak," *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 2, no. 4 (2021): 623–34.

¹⁶ Ayu Setyaningrum and Ridwan Arifin, "Analisis Upaya Perlindungan Dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak Dan Perempuan," *JURNAL MUQODDIMAH: Jurnal Ilmu Sosial, Politik Dan*

Erich Fromm suggests that humans have two types of aggression, namely defensive aggression and malicious aggression. Defensive aggression aims to defend life, is biologically adaptive and arises when a threat is present. Malicious aggression, which exhibits violence and destructiveness, is only driven by passion. Thus, violence results from intentional aggressive behavior intended to cause the victim to suffer¹⁷. Violence against women generally occurs through the concept of control over women, whether personal, institutional, symbolic and material¹⁸. Forms of domestic violence based on Article 5 of Law Number 23 of 2004, namely physical, psychological, sexual violence, and domestic neglect.

Factors causing domestic violence include the weakening of the adaptability of each family member among each other, so that they tend to act discriminatory and exploitative towards the weaker family members. External factors arise from

environmental interventions outside of the family that influence the attitudes of family members¹⁹. Aristiana and Waode agree with the view of the occurrence of domestic violence cases in their research stating that emotional instability can be a trigger for domestic violence²⁰.

Factors causing domestic violence committed by husbands to wives include²¹:

- a. A strong patriarchal culture that still exists in society;
- b. Use of violence as a tool to resolve conflicts.
- c. Competition between husband and wife
- d. The emotional instability of the husband due to frustration
- e. Weak opportunities for the wife in legal process

Other causes of domestic violence include extramarital affairs, economic conditions, differences between individuals, and patriarchal culture²². Domestic violence is not only committed by husbands to their wives.

Hummaniora 3, no. 1 (2019): 9, <https://doi.org/10.31604/jim.v3i1.2019.9-19>.

¹⁷ La Jamaa, "Pengaruhnya Terhadap Pendidikan Karakter Anak Dan Solusinya Perspektif Islam Tahkim Perilaku Kekerasan Sering Terjadi Dalam Kehidupan Masyarakat Indonesia , Baik Dalam," *Jurnal Tahkim*, no. 2 (n.d.): 137–55, <https://jurnal.iainambon.ac.id/index.php/THK/article/view/1262>.

¹⁸ Yeni Huriyani, "Kekerasan Dalam Rumah Tangga (KDRT): Persoalan Privat Yang Menjadi Persoalan Publik.," *Jurnal Legislasi Indonesia* 5, no. 3 (2008): 75–86, <https://ejournal.peraturan.go.id/index.php/jli/article/view/299>.

¹⁹ Santoso, "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial."

²⁰ Aristiana Prihatining Rahayu and Waode Hamsia, "Resiko Kekerasan Dalam Rumah Tangga (KDRT) Pada Pernikahan Usia Anak Di Kawasan Marginal Surabaya (Studi Kasus Di Kelurahan Nyamplungan , Paben Cantikan, Surabaya)," *PEDAGOGI: Jurnal Anak Usia Dini Dan Pendidikan Anak Usia Dini* 4, no. 2 (2018): 80–92, <http://journal.um-surabaya.ac.id/index.php/Pedagogi/article/view/1965>.

²¹ Rosma Alimi and Nunung Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Pengabdian Dan Penelitian Kepada Masyarakat* 2, no. 1 (2021): 20–27, <https://jurnal.unpad.ac.id/jppm/article/view/34543>.

²² Maisandra Helena Lohy and Aguz Machfud Fauzi, "Peningkatan Kekerasan Dalam Rumah Tangga (KDRT) Selama Pandemi Covid-19 Dalam

All family members have the potential to commit violence against other family members. Husbands can also be victims of domestic violence committed by their wives²³. Husbands who are victims of violence also have the right to legal protection as stipulated in the law on domestic violence²⁴. Given the fact that husbands are also victims of domestic violence, patriarchy is not the main factor causing violence against women.

Restorative Justice in Indonesian Criminal Law System

The criminal law applicable in Indonesia today is the legacy of the Dutch criminal law and characterized by its written law²⁵. Criminal law aims to regulate the life of society in order to create and maintain public order. In particular, criminal law protects the interests of the law against acts that violate the rules of the criminal code/acts against the law with criminal sanctions. In relation to individual protection, there are three protected things, namely the protection of life, property and honor²⁶.

In criminal law, there are several type of offenses including criminal offenses, violation offenses, formal offenses, material offenses, *commissionis* offenses (violation of prohibition), *ommission* offenses (violation of order), and *commission per ommisionen commissa* offenses (violation of order and prohibition) etc. Crimes and violations differ in their quantitative nature. This view only places criminology in perspective, i.e. violations are less serious than crimes²⁷.

The concept of restorative justice dates back to the Arab, Greek, Roman and Hindustan civilizations in cases of taking other people's lives. In 1977, the term restorative justice was introduced by Albert Eglash. He divided the three criminal courts, namely Retributive Justice, Distributive Justice, and Restorative Justice²⁸. In examining women's cases related to law, judges must pay attention to gender equality and nondiscrimination by prioritizing the following trial facts.²⁹

- a. Inequality of social status between the litigants;

Kacamata Sosiologi Hukum,” *Res Judicata* 4, no. 1 (2021): 83–98.

²³ Gilang Prambudi Adi Negoro dan Ratna Kusuma Hadi, “Perlindungan Hukum Terhadap Suami Sebagai Korban Kekerasan Dalam Rumah Tangga Yang Dilakukan Oleh Istri,” *Gema* 27, no. 50 (2015): 1746–66.

²⁴ Amrullah Amrullah and Dahliana Dahliana, “Perlindungan Hukum Terhadap Suami Sebagai Korban Kekerasan Dalam Rumah Tangga Dalam Pandangan Hukum Positif Dan Hukum Islam,” *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 8, no. 1 (2019): 60, <https://doi.org/10.22373/legitimasi.v8i1.6440>.

²⁵ Bunyana Sholihin, “Supremasi Hukum Pidana Di Indonesia,” *Unisia* 31, no. 69 (2008): 262–72, <https://doi.org/10.20885/unisia.vol31.iss69.art6>.

²⁶ Dr.Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Indonesia, Perpustakaan Nasional*, 2017.

²⁷ Joko Sriwidodo, *KAJIAN HUKUM PIDANA INDONESIA “Teori Dan Praktek,”* vol. 1, 2019.

²⁸ Hariman Satria, “Restorative Justice: Paradigma Baru Peradilan Pidana,” *Jurnal Media Hukum* 25, no. 1 (2018): 111–23, <https://doi.org/10.18196/jmh.2018.0107.111-123>.

²⁹ Mahkamah Agung RI, “Lampiran Keputusan Direktur Jenderal Badan Peradilan Umum Mahkamah Agung Republik Indonesia Nomor 1691/DJU/SK/PS.00/12/2020 Tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif (Restorative Justice)” (2020), https://badilum.mahkamahagung.go.id/index.php?option=com_attachments&task=download&id=810.

- b. Inequality of legal protection which impacts access to justice;
- c. Discrimination;
- d. Psychological impact experienced by victims;
- e. Power relations that result in the victim/witness being powerless; and
- f. History of violence from the perpetrator against the victim/witness.

In examining women in conflict with the law, judges are prohibited from:

- a. Show attitudes or issue statements that demean, blame and/or intimidate women against the law;
- b. Justify discrimination against women by using culture, customary rules, and other traditional practices or using gender-biased expert interpretations;
- c. Questioning and/or considering the victim's sexual experience or background as a basis for distinguishing the perpetrator or mitigating the perpetrator's sentences;
- d. Issuing statements or views that contain gender stereotypes³⁰.

Justice in restorative justice requires an effort to restore the loss or consequences caused by the criminal offense and the perpetrator. In this case, the perpetrator is given the opportunity to be involved in the recovery effort³¹. This is necessary in order to maintain public order and maintain fair peace.

The purpose of restorative justice is more about solving problems between parties in social relations. The implementation of restorative justice in cases of women in conflict with the law, namely the judge considers the equality of social status and justice of the parties, non-discrimination, the psychological impact of the victim, the helplessness of the victim, power relations resulting in the helplessness of the victim/witness, and the perpetrator's history of violence against the victim³². There is nothing that regulates the case of husbands as victims of domestic violence. As already explained, victims of domestic violence are not always wives.

Husbands are also potential victims of violence. Therefore, there should be a regulation in handling arrangements for the settlement of domestic violence cases with husbands as victims. The regulations if the husband is a victim should at least be handled equally to the wife as a victim. This is implemented as the principle of gender equality and nondiscrimination in the law under the protection of domestic violence.

Ideal Construction of Domestic Case Resolution

The ideal concept of handling domestic violence proposed by Margie Gladies Sopacua is by establishing the concept of legal rules of prevention and providing safe houses³³. In this article, the ideal model of protection for domestic violence cases must first be seen from the philosophical,

³⁰ RI.

³¹ Habibul Umam Taquiuddin and Risdiana, "Penerapan Keadilan Restoratif (Restorative Justice) Dalam Praktik Ketatanegaraan," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 1 (2022): 2598–9944, <http://ejournal.mandalanursa.org/index.php/JISIP/article/view/2972>.

³² RI, Lampiran Keputusan Direktur Jenderal Badan Peradilan Umum Mahkamah Agung Republik Indonesia Nomor 1691/DJU/SK/PS.00/12/2020 Tentang Pemberlakuan Pedoman Penerapan Keadilan Restoratif (Restorative Justice).

³³ Sopacua, "Konsep Ideal Pencegahan Kekerasan Dalam Rumah Tangga Terhadap Perempuan."

sociological and juridical aspects. In terms of philosophical aspects, the relationship between husband and wife wrapped in marital ties should aim to form a happy and lasting family (household) based on the Almighty God³⁴. That means, there is a spiritual bond between husband and wife that is protected by their beliefs.

Based on the sociological aspect, there is a tendency to dominate each other in a personal relationship. There is a tendency for one person to be in control of others. However, on the other hand, there are also those who communicate and always give in³⁵. From the juridical aspect, Indonesian legislation, especially laws governing the elimination of domestic violence, is based on respect for human rights, gender justice and equality, non-discrimination, and victim protection. When viewed from these principles, this law applies to protect victims, whether they are husbands or wives, or other family members.

This principle of nondiscrimination and gender equality clearly shows that from the beginning, the drafters of the law believed that violence is not only committed by husbands to wives but also by wives to husbands. Based on the study of these three aspects, the resolution of domestic violence cases using the concept of restorative justice is to assist victims and perpetrators by independent

institutions or parties. Assistance is carried out within a certain period after consulting with a psychologist. If it is deemed possible, both parties can conduct mediation. Mediation is conducted to find common ground that benefits all parties in order to maintain the unity of the household³⁶. The mediator has the principle to solve the problem peacefully according to the principle of justice for both parties. All kinds of losses caused by violence can be discussed according to mutual agreement.

This mentoring concept has advantages and disadvantages. The advantages of this concept are lowering the divorce rate, lowering the rate of criminal case settlements, and maintaining relationships in the community. However, the disadvantage of this concept is that the resolution process can be prolonged due to adjusting to the psychological conditions of the parties.

CONCLUSION

Cases of domestic violence can happen to wives or husbands. So far, more cases of domestic violence have been exposed as the wife is the victim. Technically, the resolution of violence experienced by women can be done through restorative justice as stipulated in existing regulations. However, these regulations do not yet regulate when a husband is a victim of domestic

³⁴ Pemerintah RI, "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (1974).

³⁵ Kiki Zakiah, "Hubungan Dalam Komunikasi Diadik Suami-Istri.," *Mediator*, 3, no. 2 (2002): 295–304, <https://ejournal.unisba.ac.id/index.php/mediator/article/view/776><https://ejournal.unisba.ac.id/index.php/mediator/article/download/776/439>.

³⁶ Dominggus Steven Djilarpoin and Sherly Adam,

"Pemenuhan Hak-Hak Korban Kekerasan Dalam Rumah Tangga (Studi Pada Polres Kepulauan Aru)," *SANISA: Jurnal Kreativitas Mahasiswa Hukum* 1, no. 1 (2021): 14–23, <https://fhukum.unpatti.ac.id/jurnal/sanisa/article/view/513>[http://files/1785/Djilarpoin dan Adam - 2021 - Pemenuhan Hak-Hak Korban Kekerasan Dalam Rumah Tan.pdf](http://files/1785/Djilarpoin%20dan%20Adam%20-%20Pemenuhan%20Hak-Hak%20Korban%20Kekerasan%20Dalam%20Rumah%20Tan.pdf).

violence. In this case, the resolution of victims of domestic violence can be made through a mediator involving psychologists as independent parties in resolving cases of domestic violence.

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